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April 3, 2007

TESTIMONY OF KIM WILSON IN OPPOSITION TO HB 610

My name is David (Kim) Wilson, and I am an attorney at Reynolds, Motl and Sherwood in Helena, MT. I have represented conservation organizations and individuals asserting their constitutional environmental rights a number of times over the years. I was counsel in *MEIC v. DEQ* in which the Supreme Court said that the right to a clean and healthful environment was a fundamental right, and that any statute or rule that implicated it must be strictly scrutinized. I oppose HB 610, and want to point out to the Committee three infirmities in the bill.

1. MEPA was and is intended to implement both the Article II, Section 3 right to a clean and healthful environment, and the Legislature's related duties under Article IX, Section 1 (3), § 75-1-102 (1), MCA, **and** the Article II, Section 8 right to participate, pursuant to § 2-3-104 (1), MCA in the Public Participation Act. With the passage of HB 610, MEPA will internally contain rights without a remedy, and that, I believe, is unconstitutional and raises due process and redress issues.
2. The Supreme Court in the *MEIC v. DEQ* case said that the constitutional environmental provisions were intended to be "anticipatory and preventative. . . . Our constitution does not require that dead fish float on the surface of our state's rivers . . . before its farsighted environmental protections can be invoked." *MEIC v. DEQ*, 296 Mont. 207, ¶ 77. The Court also said that the state must **demonstrate** a compelling state interest before infringing on these constitutional rights. MEPA is the **only instrument** for analyzing the environmental impacts of development before it occurs. If citizens do not have an ability to enforce, their constitutional rights become meaningless. Moreover, since the Legislature's "review" of MEPA documents will, necessarily be after the fact, given the biannual nature of the Legislature, the Legislature's review will not be "anticipatory and preventative."
3. As a practical matter, this bill imposes on the Legislature an **affirmative duty** to meaningfully review all MEPA documents if it is going to, as will be required by the amendment, make sure that environmental attributes are "fully considered by the legislature in enacting laws." (Section 1). Reviewing dozens of MEPA documents is going to substantially increase the Legislature's work load if that newly required review is going to be meaningful.